

REMARKS/ARGUMENTS

These remarks are made in response to the Office Action of March 21, 2007 (hereinafter Office Action). As this response is timely filed within the 3-month shortened statutory period, no fee is believed due. Nonetheless, the Examiner is expressly authorized to charge any deficiencies or credit any overpayment to Deposit Account No. 50-0951.

Claims 1, 3-6, 7-13, 16, and 18-24 were rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Published Patent Application No. 2001/0039514 to Barenbaum (hereinafter Barenbaum). Claims 2 and 17 were rejected under 35 U.S.C. §103(a) as being unpatentable over Barenbaum, in view of U.S. Patent No. 6,611,811 to Deaton (hereinafter Deaton).

Amendments to the Claims

In this response, Applicants have amended independent Claims 1, 10, and 16 to emphasize certain aspects of the claims. In particular, Claims 1, 10, and 16 have been amended to include the further limitation that once obsolete products from a merchant have been identified, the consumers who purchased these obsolete products can be identified and promotional materials can be generated for them promoting a new or alternate version of the product. Claims 4 and 19 have also been amended to include the limitation that business necessities requiring promotion are based on an excess of new or alternate versions of now-obsolete products. Such claim amendments are fully supported throughout the Specification. (See, e.g., Specification, page 22, line 13 to page 23, line 5 and page 24, lines 3-22.) No new subject matter has been added by these claim amendments.

The Claims Define Over the Cited References

As previously mentioned, Claims 1, 3-6, 7-13, 16, and 18-24 were rejected as being anticipated by Barenbaum. Barenbaum discloses a system and method for managing excess capacity for events, products, and offers that have an expiration time. However, in view of the claim amendments previously discussed, Applicants respectfully submit that Barenbaum fails to disclose each and every element of the claims as asserted in the Office Action.

First, Barenbaum fails to disclose the step of ascertaining which potential customers have purchased products from the merchant that are now obsolete. Barenbaum discloses identifying customers based on a user profile, but does not explicitly disclose identifying users based on products purchased that are obsolete, due to new versions being available, or that have reached the end of their product cycle lifetime. (See, e.g., para. [0035].) Such a feature is also not disclosed in any other reference of record. In contrast, the claims explicitly recite the limitation that potential customers are identified by identifying customers who have previously purchased items from a merchant that are now obsolete.

Second, Barenbaum fails to disclose the step of generating promotional material for the new or alternate version of the now-obsolete product previously purchased by consumers. In Barenbaum, promotional materials are generated based on the merchant having an excess capacity of a product and determining that the user previously purchased such a product. (See, e.g., para. [0018]-[0021].) Nowhere, however, does Barenbaum disclose or suggest that any promotional materials would be generated to promote a new or an alternative version of a product in response to determining that a consumer previously purchased an obsolete version of the product. Such a feature is also

not disclosed in any other reference of record. In contrast, the claims recite that the promotional materials are generated to promote the newer or alternate version of the now-obsolete version of the product purchased by the consumers.

Third, Barenbaum fails to disclose the step of associating promotional materials for new or alternate versions of products with consumers identified as having previously purchased now-obsolete products. As discussed above, Barenbaum does not disclose identifying users based on their purchases of obsolete products.

Moreover, even were Barenbaum properly read as disclosing such a limitation, Barenbaum still fails to explicitly or implicitly disclose that such identification would be used to target promotional materials for new or alternate versions of products being sold by a merchant. Rather, Barenbaum only discloses providing promotional materials to consumers, according to their profile, when an excess amount of products is in inventory. In contrast, the claims explicitly recite the limitation that promotional materials are associated with a consumer based on their previous purchase of a now-obsolete product, whether the inventory of the merchant shows an excess capacity or not.

Accordingly, Barenbaum, alone or in combination with any other reference of record, fails to disclose each and every feature of independent Claims 1, 10, and 16. Applicants therefore respectfully submit that the independent claims define over the references of record. Furthermore, as each of the remaining dependent claims depends from one of Claims 1, 10, and 16 while reciting additional features, the remaining dependent claims likewise define over the references of record.

CONCLUSION

Applicants believe that this application is now in full condition for allowance, which action is respectfully requested. Applicants request that the Examiner call the

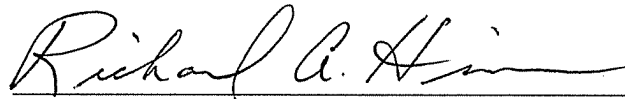
Appln. No. 09/785,700
Amendment dated June 21, 2007
Reply to Office Action of March 21, 2007
Docket No. 6169-156

IBM Docket No. BOC9-2000-0017

undersigned if clarification is needed on any matter within this Response, or if the Examiner believes a telephone interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,

Date: June 21, 2007



Gregory A. Nelson, Registration No. 30,577

Richard A. Hinson, Registration No. 47,652

Eduardo Quinones, Registration No. 58,575

AKERMAN SENTERFITT

Customer No. 40987

Post Office Box 3188

West Palm Beach, FL 33402-3188

Telephone: (561) 653-5000